

August 9, 2005: Washingtonpost.com Online Discussion: Iraq Constitution

FOR IMMEDIATE RELEASE

August 9, 2005

Contact:

Anne Johnson, Director of Communications, (202) 523-3240, ext. 27

The Washington Post

August 9, 2005

Religious Freedom in Iraq

With Preeta D. Bansal and Robert Blitt

Will religious freedom be protected under the new Iraqi constitution?

Preeta Bansal , attorney and a commissioner of the U.S. Commission on International Religious Freedom, and Robert Blitt , international law specialist and senior policy adviser for Iraq at the U.S. Commission on International Religious Freedom, think that the current draft of the Iraqi constitution predominantly casts a shadow over religious freedom. They fear that too much legal authority is being placed under Islamic law.

How should religion be protected in Iraq? What scale should be used to balance religious freedom and legal authority? And how should the Iraqi constitution be rewritten to protect religious differences?

Robert Blitt and Preeta Bansal were online on Tuesday, Aug. 9 at 2 p.m. ET to discuss human rights and religious freedom in the Iraqi constitution.

The transcript follows.

Preeta Bansal: Thank you for joining us. The U.S. Commission on International Religious Freedom is a bipartisan independent federal agency created by Congress in 1998 to give advice to the President, Secretary of State, and Congress about how best to promote the freedom of thought, conscience, and religion or belief abroad, as those freedoms are defined in the international human rights instruments. Our Commissioners are appointed by the Senate, House of Representatives, and the White House, and we are assisted by a permanent staff in Washington. We have been concerned about the fact that while the United States has fought a war in Iraq at considerable cost of blood and treasure, the Iraqi constitutional drafting committee may well be on its way toward establishing an Iran-like judicial theocracy in Iraq. We believe that, at this stage of our engagement, the United States and the international community must act to ensure that democracy and freedom are supported in Iraq through its constitution as well as other measures. This is essential for regional security as well as for human rights. We look forward to your questions.

Colorado: While this country embraces a separation of church and state, other Western nations (most notably, Great Britain) do not. Is this vital to a successful democracy in Iraq or a successful democracy period?

Preeta Bansal: The international legal instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights (ICCPR), to both of which Iraq is party, do not disallow a state from adopting or establishing a particular religion as official or traditional. These instruments do, however, prohibit a state from discriminating against or impairing any rights of non-believers or adherents of other religions. Unfortunately, the drafts of the Iraqi constitution that are circulating would go far beyond establishing Islam as the official religion of the state (which is allowed). The drafts have Islamic law principles pervade numerous aspects of the Bill of Rights, and even make the individual rights guarantees in the constitution subject to (and able to be superseded by) Islamic law -- and so the rights guarantees for non-Muslims and non-believers (and even for Muslim believers who do not subscribe to the majority sect or the state-imposed version of Islam) could be impaired by official interpretations of Islam. This is contrary to the requirements of international law, and certainly would undermine a successful democracy in Iraq by chilling rights of expression, political debate and dissent, individual thought, and full participation in political and public life by all Iraqis.

Robert Blitt: A study recently released by the Commission addresses the state of play with respect to religion in the constitutions of 44 Muslim countries. This study sets also out the international standards with respect to freedom of religion and related rights, including equality and nondiscrimination. The study, in English and Arabic, is available for free download from the Commission's Web site, The U.S. Commission on International Religious Freedom

Paris, France: Has the Commission been to Iraq? Are you working directly with Iraqis or just with policy makers in Washington?

Robert Blitt: The Commission has benefited from numerous and ongoing interactions with Iraqis, including: meetings with senior Iraqi officials at the International Conference on Iraq in Brussels, meetings with Iraqi civil society leadership in Jordan, and meetings with leadership from various Iraqi minority groups, also in Jordan. These sessions have included Commissioner-level meetings with members of Iraq's constitution drafting committee, political party leaders, and government ministers.

In addition, to these meetings, the Commission maintains ongoing communications with various concerned organizations and individuals, including: the United Nations, U.S. contractors, women's groups, and religious and ethnic minority groups, based in Iraq, the U.S., and elsewhere.

Because the Commission is a U.S. government entity created by Congress and funded entirely by the federal government, any official travel undertaken must be done in coordination with the Department of State. The Commission has previously submitted a request to travel to Iraq for meetings on the ground, and is awaiting approval of this request from State.

Preeta Bansal: I would simply add that we met in Washington with newly appointed U.S. Ambassador to Iraq, Zalmay Khalilzad, a few weeks ago before he arrived in Baghdad. He indicated that he would welcome a visit by our Commission to meet with Iraqi leaders in Baghdad at an appropriate stage in the process, and depending on security concerns. Now that he is on the ground there, and a draft constitution presumably will be produced for the political consultative stages, we hope to get further about the possibility.

New York, N.Y.: How significant a role do the majority of Iraqi leaders, and the Iraqi population, want Islamic law to play in their constitution? Is it even possible to create a constitution for Iraq that considers both Church and State? This hasn't seemed to work for Israel, how will it work for Iraq?

Robert Blitt: According to recent public opinion polls undertaken in Iraq, a majority of Iraqis support a role for Islam in the constitution. However, these polls do not address whether the population has a good handle on what the implications for such a role might be. Moreover, the same polls indicate that a majority of Iraqis support human rights guarantees in the permanent constitution, including freedom of religion, support for minority rights, and the rights of women, including a quota for women in the Iraqi parliament. Another survey recently undertaken as part of the UN's Arab Human Development Report confirms support for basic human rights, including freedom of religion, within a host of Arab countries.

It is possible to balance mosque/state relations, as reflected in current constitution text in a number of Muslim countries. The Commission's recent study of Muslim constitutions demonstrates that nearly half the world's Muslim population is able to practice their faith in countries that are declared secular or in countries that make no declaration with respect to a state religion. Some Muslim states declare Islam as a state religion and also allow for freedom of religion at the same time. Accordingly, there is nothing inherently incompatible between Islam and a state that respects human rights.

Adams Morgan: Do the majority of Iraqis actually want religious freedom as we practice it in America? If there was "true" democracy in Iraq, and the rest of the Middle East for that matter, wouldn't most nations be Islamist theocratic nations?

Preeta Bansal: As Robert indicated in his answer to the question above, most Iraqis in polling have suggested that they want basic human rights protection and the freedom to practice their faith in the manner they deem correct. The task for the constitutional drafting commission in Iraq is to support a long-term constitutional democracy -- not just to support the short-term preferences of particular groups of individuals. That means that the structures will have to be created whereby individuals will have the rights to think, speak, and debate and dissent. Ensuring the freedom of thought, conscience and religion or belief is a key component of that. Even within an Islamic state, those freedoms should be possible -- as evidenced by our survey of the constitutions of the 44 predominantly Muslim countries in the world. We do not advocate the imposition of American-style religious freedom; we advocate the inclusion of religious freedom as that is defined in the international legal instruments to which Iraq is party.

Munich, Germany: I read a while back that liquor stores in Baghdad, which were owned and run predominantly by Iraqi Christians and patronized by Iraqis of all religious denominations, have been forced to close shop through intimidation and vandalism.

Is this a sign that religious tolerance is a thing of the past in Iraq for most Iraqis?

Preeta Bansal: I think it's a decent sign both of the security issues plaguing Iraqis in general, as well as a sign that religious tension and conflict indeed have exacerbated. We such rising religious tension also in the flight of the non-Muslim communities from Iraq (e.g., Chaldo Assyrians, Mandaean, and others), the bombing of ancient Christian churches in Iraq, and the ever-widening chasm and violence between Sunni and Shi'a Muslim communities.

Robert Blitt: I would just add to Preeta's comments that the warning signs of religious intolerance run deeper than the shuttering of liquor stores: there have been numerous reports that women - Muslim as well as non-Muslim -- are being compelled to wear the veil against their will, some university campuses are being forced to use separate entrances for men and women, non-Muslims are being forced to renounce their faith, and even barbers are being targeted for assassination as a consequence of offering to shave beards or give "western" haircuts.

These attacks are directed against all of the Iraqi people, non-Muslims and Muslims alike. The Commission believes that the drafting of a permanent constitution provides an unprecedented opportunity to guarantee individual human rights for all Iraqis, and to create a positive foundation upon which the country can move forward.

New York, NY: Do you think that the new Iraqi constitution should look just like the one in the United States? If most Iraqis are Muslim, shouldn't they be able to create a constitution that reflects their religious culture?

Preeta Bansal: The Iraqi constitution does not need to look like the United States' constitution. It should reflect Iraq's international human rights obligations, though, to which Iraq has acceded. Iraqis should be able to define their state as Muslim or predominantly Muslim, but, in accordance with international law, they must also ensure freedom of thought, conscience, and religion or belief for all individuals (Muslim as well as non-Muslim). I should also add that our concern for religious freedom is not meant solely for religious minorities in Iraq. It is meant also for the predominantly Muslim population. With religious freedom, individual Muslims are free to practice their faith as they see fit, and may debate and dissent from state-imposed orthodoxies. This is essential to provide the political breathing space necessary for alternative (and possibly more moderate) strands of Islam to emerge. Otherwise you have the real risk that a handful of hard-line clerics will determine the meaning of Islam for all Iraqis, rather than the Iraqis themselves.

Detroit, Mi.: What is the Commission and what does it do? How does it look at religious freedom in the United States?

Robert Blitt: The U.S. Commission on International Religious Freedom was created by the International Religious Freedom Act of 1998 to monitor the status of freedom of thought, conscience, and religion or belief abroad, as defined in the Universal Declaration of Human Rights and related international instruments, and to give independent policy recommendations to the President, the Secretary of State, and the Congress.

Preeta Bansal: Our mandate does not extend to issues of religious freedom within the United States (our judicial system does that). Rather, we advise about U.S. foreign policy, and try to ensure that international human rights guarantees related to freedom of religion or belief are incorporated within that foreign policy framework.

Wheaton, Md.: The issue of religious freedom was rejected when the drafters of the constitution sited "Islam as a source of law." By attempting to appease terrorists with this clause, the government of Iraq made all non-Muslims second class citizens.

Preeta Bansal: The drafts of the constitution currently circulating

reject religious freedom in a number of ways: (1) they make Islam not only "a source" of law, but the "basic source of legislation" -- and do not mention other possible sources, such as international human rights obligations (as do many other Muslim countries' constitutions), or the bill of rights guarantees in the constitution itself; (2) they provide that several members of the constitutional court may be shari'a jurists, with no training in civil law -- thus putting the Iraqi judiciary in the company of Iran, Saudi Arabia, Afghanistan and Pakistan; (3) they provide that no law may be enacted which opposes the principles and rules of Islam, thus putting in the hands of the constitutional court (shari'a) jurists the final authority of determining whether legislation may be enacted; and (4) they provide that most of the bill of rights guarantees -- such as the freedom of religion or the freedom of speech -- may be curtailed by ordinary law.

Washington, D.C.: What is the best way to constitutionally protect Islamic interests and religious freedom for all in the same document? How might a constitution be crafted so as to ensure Muslims that they may influence their destiny (chose to live under and be governed by Islamic law if they so choose) without Islamic law dominating their constitution?

Robert Blitt: The Shi'a majority in Iraq has, after years of oppression under Saddam's regime, been given the opportunity to lead the political process. This opportunity should not be squandered by losing sight of Iraq's multiethnic and multi-religious heritage, especially during the drafting of the permanent constitution. By protecting individual human rights for all Iraqis in this document, the interests of Muslims will necessarily be protected under the umbrella of individual human rights. In addition, as noted, under certain conditions, a state can declare an official religion under international law. As well, the Transitional Administrative Law, or TAL, demonstrated that sharia, or Islamic law, can be balanced as "a source of legislation" by including human rights as a source, and also by ensuring that no interpretation of sharia is permitted that would be counter to recognized human rights.

Iraq is a signatory to the International Covenant on Civil and Political Rights, as well as other international treaties, and accordingly, Iraqis, both drafting and approving the constitution, should be informed about the nature and content of those treaties.

Adams Morgan: Is it perhaps a bit naive to expect Iraq, and other newly Democratic nations like it, to smoothly transition to a government in which all religious ideas and thought are respected? In America, anti-orthodox thought was rejected for centuries, and we are still having issues allowing true freedom of religion, right?

Preeta Bansal: It's fair to say that these issues will always continue to be worked out in every society over time. But the United States, for better or worse, has had a big role in the formation of a new Iraqi state. The values that are ultimately enshrined in its constitution -- even if not able to be fully implemented immediately in practice -- are therefore nevertheless important issues of our concern. Otherwise our country will have played a huge role in establishing a theocratic Islamic state in the heart of the Middle East.

Robert Blitt: Thanks for your questions. Please log in to our Web site for further information, The U.S. Commission on International Religious Freedom

Editor's Note: Washingtonpost.com moderators retain editorial control over Live Online discussions and choose the most relevant questions for guests and hosts; guests and hosts can decline to answer questions.

© 2005 Washingtonpost.Newsweek Interactive